

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



September 14, 1999

ALL-COUNTY INFORMATION NOTICE NO. I-68-99

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY WELFARE-TO-WORK
COORDINATORS

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order or Settlement Agreement
- ☐ Clarification Requested by One or More Counties
- ☒ Initiated by CDSS

SUBJECT: IMPACT OF BACKGROUND CHECKS ON WELFARE-TO-WORK PLANS

REF: HEALTH AND SAFETY CODE SECTIONS 1522, 1568.09, 1569.17, AND
1596.871
TRUSTLINE REGISTRY AND HEALTH AND SAFETY REQUIREMENTS,
MPP CHAPTER 47-600

The purpose of this letter is to ensure that County Welfare Department (CWD) staff are aware of Community Care Licensing (CCL) licensure and employment requirements before developing a Welfare-to-Work plan for recipients who are seeking future employment as a CCL facility caregiver or employee; e.g., family child care provider, child care center employee; or who are seeking employment in fields for which a background clearance is required; e.g., someone who wishes to accept a position in Early Childhood Education or as a Certified Nursing Assistant, etc. It is important that recipients are made aware of CCL background check requirements for licensure and/or employment in CCL facilities, or other applicable fields of employment, before they enter into a Welfare-to-Work plan to prevent any potential problems that could result from the individual's failure to pass the required background check process.

All applicants for licensure and employment in a community care facility and other applicable fields of employment must submit fingerprints to the Department of Justice (DOJ) and clear a California background check, Federal Bureau of Investigation (FBI) national background check and a Child Abuse Central Index Check. Additionally, most license-exempt child care providers also must clear a criminal record background check through the Trustline Registry system and meet basic health and safety requirements in order to receive payment for subsidized child care services. If clearance is denied, an exemption to the denied clearance may be allowed if an individual has a conviction that meets specific exemption criteria and the individual does not pose a threat to clients in care. See the attached information notice, "The Exemption Process," for more detailed information about exemptions.

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If a recipient self-declares a criminal history, the recipient must be informed that they probably will not get a clearance from DOJ. A recipient can request an exemption with CCL for a criminal conviction only if they do not have a "non-exemptible" conviction (see attached list). An exemption will be approved only if the individual meets specific exemption criteria. Recipients with convictions may want to consider Welfare-to-Work plan employment goals that do not require a background check.

If the County is aware that an individual has a criminal history that will result in denial of a clearance and exemption, the County should not proceed with a Welfare-to-Work plan to prepare for an occupation or employment in a field that requires a background check. Instead, an alternative plan that is within the individual's abilities to achieve should be explored and developed.

If you have any questions about the Welfare-to-Work plan process, please contact Ray Christensen, Employment Bureau at (916) 654-1426. If you have questions about the Caregiver Background Check process, please contact Randy Kellen or the CCL duty officer at (916) 274-6200.

Sincerely,

***Original Document Signed By
Charr Lee Metsker on 9/14/99***

CHARR LEE METSKER, Chief
Employment and Eligibility Branch

Attachments

c: CWDA
CSAC

Information for Community Care Facilities and Employees

THE EXEMPTION PROCESS

The Law

The California Health and Safety Code requires fingerprinting of applicants, licensees, residents, or employees of community care facilities who have contact with clients. If the state Department of Social Services finds that an individual has been convicted of a crime other than a minor traffic violation, that person may not work or be present in the facility unless the Department grants an exemption. (See Health and Safety Code sections 1522, 1568.09, 1569.17 and 1596.871.)

The Exemption Process

When a community care facility or an applicant for license sends a fingerprint card or a livescan transmittal to the state Department of Justice (DOJ), DOJ will conduct a criminal record check. If an individual has a criminal history, DOJ will forward a report to the state Department of Social Services, Caregiver Background Check Bureau (CBCB). The report will include all felony or misdemeanor convictions and arrests. CBCB will review the report and advise the community care facility of what action is required. If an individual has committed a more serious offense, CBCB may call the facility to require immediate exclusion of the individual from the facility. An individual excluded from a facility may not return unless an exemption is granted by CBCB.

During the exemption process, CBCB will determine if the individual is suitable to work in the community care facility. The individual will be asked to provide letters of character, reference, an honest account of all offenses, what has been done to prevent offenses from occurring again, and certificates or other documentation of training, education, or rehabilitation. CBCB will review this information along with police reports and official court documents.

What Crimes Require an Exemption?

An exemption may be required for any crime other than minor traffic violations, regardless of whether it was a felony or a misdemeanor, and even if it happened a long time ago.

Role of the Facility

When a licensee receives an exemption notification letter from CBCB, they must decide whether they wish to seek an exemption for the employee. If an exemption is desired, the licensee must assist the employee with completion of the exemption process and must mail all required documents to CBCB. If the licensee does not wish to seek an exemption for an employee and subsequently terminates their employment, the employee must immediately be given instructions for an "individual Exemption Request" included with the exemption letter.

An employee seeking an individual exemption may not work or be present in any community care facility unless the exemption is approved by CBCB.

Prospective foster parents applying for certification through a foster family agency cannot seek an individual exemption. The foster family agency must decide if an exemption is desired. However, regular employees of a foster family agency can seek an individual exemption.

Deadline for Exemptions

All exemption requirements must be received by CBCB no later than 30 days from the date of the exemption notification letter. If materials are not received by the deadline, the case will be closed and the file destroyed. The exemption analyst assigned to the case may take up to 30 days from the deadline to make a decision, or may extend the time frame if additional information is needed.

Notification of Decision

A licensee seeking an exemption will be notified of CBCB's decisions in writing. If the exemption is an individual request, the person seeking the exemption will be notified in writing.

Right to Appeal

If an exemption request is denied, the employee or applicant can request an appeal in writing within 15 days of the date of the denial letter. Appeals received after this deadline cannot be considered.

Transfer of an Exemption

An exemption may only be transferred to a similar community care facility with the approval of CBCB. The facility seeking the transfer must submit a request in writing to their community care licensing district office.

NON-EXEMPTIBLE CRIMES LIST

THIS IS A LIST OF NON-EXEMPTIBLE CRIMES, WHICH UPON CONVICTION DISQUALIFY INDIVIDUALS FROM WORKING, RESIDING OR BEING PRESENT (EXCEPT AS A CLIENT) IN A COMMUNITY CARE LICENSED FACILITY AND ARE REFERENCED IN THE FOLLOWING CALIFORNIA PENAL CODE SECTIONS:

- | | |
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| 187 | Murder or voluntary manslaughter |
| 192 | Attempted murder |
| 203,
205 | Mayhem, Aggravated Mayhem |
| 207(b) | Kidnapping to commit child molestation* |
| 208(b) | Kidnapping a child under 14 |
| 208(d) | Kidnapping with intent to commit specified sex offenses* |
| 215(b) | Carjacking, if person is charged and convicted of 12022(b) in the commission of the carjacking. |
| 220 | Assault with intent to commit sexual crime or mayhem* |
| 243.4 | Sexual battery* |
| 261(2) | Rape* |
| 261(a)
(6) | Forcible rape * |
| 262(a)(1) | Forcible spousal rape* |
| 264.1 | Rape in concert by force or violence* |
| 264.17 | In concert rape* |
| 266 | Enticing minor into prostitution* |
| 266c | Consent to sexual intercourse by fear or fraud* |
| 266h(b) | Pimping a minor* |
| 266j | Providing a minor under 16 for lewd or or lascivious acts* |
| 266j(b) | Pandering a minor * |

267	Abduction for purpose of prostitution*
269	Aggravated assault of a child*
272	Contributing to the delinquency of a minor involving lewd or lascivious conduct*
273a(a), 273a(1)	Child abuse or neglect*
273d	Corporal punishment or injury of a child (before 1/77)*
285	Incest*
286	Sodomy*
288	Child molestation*
288a	Oral copulation *
288.2	Distributing lewd material to children (felony convictions only)*
288.5	Continuous child sexual abuse *
289	Rape by penetration with a foreign object*
290(a)	All crimes for which one must register as a sex offender including attempts and not guilty by insanity (crimes with asterisk*)
311.10	Advertising /distributing child pornography*
311.2 (b), (c),(d);	Transporting or distributing child-related pornography*
311.3	Sexual exploitation of a child*
311.4	Using a minor to assist in making or distributing child pornography*
311.11	Possessing child pornography *
314(1), 314(2)	Lewd or obscene exposure of private parts (only if finding that required to register)*
368(a), 368(b)	Elder or dependent adult abuse
451(a)	Arson causing great bodily injury
647.6	Child molestation *

647(d) Disorderly conduct for loitering around a public toilet to solicit sex*

653f(c) Solicit another to commit rape, sodomy, etc.*

12022(b) Any robbery perpetrated in an inhabited dwelling house, vessel, or inhabited trailer coach, and with the use of a weapon.

12308 Exploding or attempting to explode device to commit murder.

Any felony in which defendant uses a firearm and is convicted under Section 12022.5 or 12022.53.

Any felony in which defendant uses a firearm punishable by death or life imprisonment in the state prison, but not indeterminate sentence (e.g. 5 years to life).

Any felony in which the defendant (not an accomplice) inflicts great bodily injury on any person which has been charged and proven as provided in Section 12022.7 or 12022.9 (after 7/1/77) or 213, 264 and 461 (before 7/1/97).

Any person convicted of the attempt to commit any of the above-mentioned offenses.

(REV 6/99)